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By email only

Board of Directors
Surrey Ridge Homeowners Association
c/o Harlan Pelz, President

Re: Some responses to questions of the week of March 26, 2012

Dear Members of the Board:

1. There are five governing documents, in order of priority:
 1. Declaration (three separate)
 2. Articles of Incorporation
 3. Bylaws
 4. Rules
 5. Policies and Procedures
2. Over all of these are the statutes and case law of the federal, state, and county level. The most pertinent are the Colorado Common Interest Ownership Act ("CCIOA"), the Colorado Revised Nonprofit Corporation Act, and the amendments and applicable case law interpreting them.
3. The Declarations state that a homeowners association is established to provide services not provided by governmental authorities. Generally, all owners of lots in the stated filings are members of the association and entitled to one vote for each lot owned in conducting the affairs of the association.
4. Surrey Ridge is a "common interest community" as defined in CCIOA, CRS 38-33.3-103(8). This is essentially a real property term, not a corporate term.
5. [I will generally refer to just the sections of CCIOA, omitting the CRS 38-33.3-]
6. CCIOA 117 lists the sections of CCIOA that apply to common interest communities created before July 1, 1992. Surrey Ridge is one of these and the stated sections of CCIOA apply to Surrey Ridge without any further action by

owners or members of the Surrey Ridge Homeowners Association ("Association").

7. CCIOA 103(2) is the definition of "association" and refers to CCIOA 301 that states that an association shall be organized no later than the date the first unit (lot) in the common interest community is conveyed to a purchaser. That essentially occurred as Surrey Ridge was developed. CCIOA 301 states that the membership of the association at all times shall consist exclusively of all (lot) owners.
8. CCIOA 302, among many other things, states that, subject only to the provisions of the declaration, the Association may adopt and amend budgets and collect assessments for common expenses from owners.
9. The Colorado Supreme Court case of West v. Evergreen Highlands essentially says that, if the Association has the obligation to maintain common areas, it has the right to assess the owners for those common expenses.
10. CCIOA 316 establishes the Association's statutory lien on a lot for any assessment levied on the lot, plus fees, charges, late charges, attorney fees, fines, and interest. The Association did not need to take any further action because recording the declaration constitutes record notice and perfection of the lien. It is good practice to record a Notice of Lien on each delinquent lot to ensure notice to such parties as the owners and title insurance companies.
11. CCIOA 303 states that, except as provided in the declaration, bylaws, or subsection (3) of 303, the board may act in all instances on behalf of the Association.
12. The one place I see reference to Associate membership in the Association is in Article V b. of the Articles of Incorporation. It states: "Associate membership, including all rights a privileges except holding office and voting, shall be granted to any person otherwise qualified for full membership, but who has not paid the prescribed dues." The Articles may be amended to take this out or correct the status of members by following proper procedure and approval by a majority of a voting quorum at a meeting of the members of the Association. CRS 7-127-205.
13. The Bylaws in Article I, Section 4, say: "'Dues paying member' shall mean the owner of any lot who has contributed the annual dues then in effect. Such member shall be entitled to all rights and privileges of the Association including the use and enjoyment of the private park, wilderness areas, and bridle paths in

SURREY RIDGE.” I see no provision for Associate Member. Article II says that the Association has the right to maintain the right-of-way for all bridle path easements and for the maintenance and use of the private park and wilderness areas.

14. Bylaws Article X states: “Each member shall contribute annual dues in an amount determined by the members at the annual meeting for the election of directors.” That is mandatory. It says “shall.”
15. I have been told that the members voted for “mandatory dues” at a formal meeting in perhaps May of 2011. The only minutes I find are those entitled Minutes of the Open SRHOA Meeting, May 19, 2011. I see under New Business 2, “It was moved and seconded by the Surrey Ridge member quorum to adopt a mandatory \$100 annual due per lot.”
16. The Board has followed up with its Assessment Collection Rule adopted and effective January 12, 2012. It is crystal clear and mandatory.
17. All the governing documents should be posted on the website at the earliest possible time. That is everything in the list on page 1 above, including the Assessment Collection Rule and the six policies. There are two more rules or policies that the Board should adopt and there will likely be a revision of the records inspection rule or policy coming out of the legislature by May 9, 2012.
18. As you can see, one must interpret all the authorities together, including those that conflict or are silent in certain regards. Although the Articles of Incorporation confuse interpretation, the overwhelming legal authorities favor the mandatory dues on each lot for the Association to do its duty in taking care of the common areas. Any other approach immediately leads to inequitable treatment of owners and impossible enforcement challenges such as keeping nonpayers from using the common areas.
19. And the cost of competent administration of the Association has increased greatly since 1969. Whether folks like it or not, benign neglect and ignoring current legislative requirements for associations cannot continue. Most modern and updated associations recognize that, to maintain property values and good standing in the wider community, they must work with regulations and greater business competency than was required in the past.
20. And yet, this is still a political matter among all the Surrey Ridge owners that should be explained and brought before everyone in an open and conciliatory

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manner to see if there is a common sense way to go forward. There is plenty of confusion and conflict. It is probably best to take a long-term planning approach to correct documents where faulty and attempt to reach consensus by education and discussion over a number of years.

21. Please call on me with your questions and concerns.

Very truly yours,

TOBEY & JOHNSTON, P.C.

By: 
Gary H. Tobey

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